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August 28, 2002

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(Petition)  
#18

Director of Technology Center 3600  
Commissioner for Patents  
Washington, D.C. 20231

Attn: Art Unit 3653  
Patent Examiner Jeffrey A. Shapiro

Re: Application Serial No.: 09/288,685  
Confirmation No.: 7773  
Applicants: David T. Frederick  
Title: Medical Cabinet With Adjustable Drawers  
Docket No.: D-1108

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SEP 05 2002

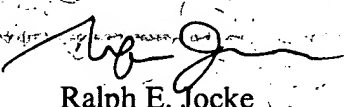
GROUP 3600

Sir,

Please find enclosed a Petition pursuant to 37 C.F.R. § 1-181 for Withdrawal of Holding of Noncompliance with 37 CFR § 1.192(c) for filing in the above case. Also enclosed is a petition requesting clarification of the record.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with the filing of the Petition, and any other fee due, to Deposit Account 10-0637.

Very truly yours,

  
Ralph E. Jocke  
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Director of Technology Center 3600, Commissioner for Patents, Washington, D.C. 20231 this 28th day of August 2002.

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D-1108

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                                                           |   |                    |
|-----------------------------------------------------------|---|--------------------|
| In re Application of:                                     | ) |                    |
| <b>David T. Frederick</b>                                 | ) |                    |
|                                                           | ) | Art Unit 3653      |
| Serial No.: <b>09/288,685</b>                             | ) |                    |
|                                                           | ) |                    |
| Filed: <b>April 9, 1999</b>                               | ) | Patent Examiner    |
|                                                           | ) | Jeffrey A. Shapiro |
| Title: <b>Medical Cabinet With<br/>Adjustable Drawers</b> | ) |                    |

Director of Technology Center 3600  
Commissioner for Patents  
Washington, D.C. 20231

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**GROUP 0000**

Sir:

Appellant received an Office Action dated March 5, 2002 indicating that the appeal brief was defective. The Office Action indicated that the appeal brief was defective only because (1) it was unsigned, and (2) it exceeded an alleged appeal brief size limit. The Office Action also referred to other rejections not of record.

Appellant, in response to the Action, resubmitted a signed appeal brief along with a letter on March 14, 2002. Appellant's letter presented arguments that the alleged appeal brief size limit was not a legal basis for holding the appeal brief defective and in noncompliance with 37 C.F.R. § 1.192(c). Appellant's letter respectfully requested reconsideration and withdrawal of the

apparent holding of defective appeal brief. Appellant's letter also included a request for clarification of the record.

Appellant filed a petition on May 3, 2002 pursuant to 37 C.F.R. § 1.181 for Withdrawal of Holding of Noncompliance with 37 C.F.R. § 1.192(c). The petition also included a request for clarification of the record.

Appellant received an Office Action ("Action") dated July 11, 2002 alleging that the signed appeal brief was now newly defective because it did not address the allegedly previous (not of record) rejections in the Office Action dated March 5, 2002.

Appellant has not yet received a response to the petition of May 3, 2002. Thus, Appellant submits the following petition. If a request for reconsideration is again required, then this petition should be considered as such. The remarks in Appellant's petition dated May 3, 2002 are herein incorporated by reference.

#### **Petition For Clarification Of The Record**

It remains unclear from the record which rejections are currently pending in the application. Appellant requests that the record be clarified.

The Office Action dated March 5, 2002, as best understood, indicated that the originally filed appeal brief was unsigned and required a signed copy thereof. This indicated to Appellant that the rejections to which the appeal brief pertained were still in effect. In response, Appellant resubmitted a signed appeal brief on March 14, 2002.

The Office Action dated March 5, 2002 also apparently referred to other rejections not of record. However, an introduction of new rejections would have constituted new grounds of

rejection and would have required that prosecution be reopened. Yet there was no indication or statement in the Office Action dated March 5, 2002 that prosecution was reopened. Nor was the Office Action dated March 5, 2002 in compliance with the procedural rules of the Office (MPEP § 1208.02) for reopening prosecution. Furthermore, because of the Office's requirement for a signed copy of the appeal brief originally filed 12/17/01, one would conclude that prosecution had not been reopened. That is, why would the Office require a signed copy of the originally filed appeal brief if they were reopening prosecution? Thus, Appellant understood that the originally filed appeal brief remained in effect.

In response to Appellant's request for clarification, the Office Action dated July 11, 2002 was made final. That is, the Office Action dated July 11, 2002 somehow improperly includes both a Notification of Non-Compliance with 37 C.F.R. § 1.192(c) ("Notice") and a final rejection. Yet this time the Notice does not rely on a previously unsigned appeal brief for the alleged defect, but instead on rejections not previously of record. Whatever happened to Appellant's signed appeal brief which was submitted in response to the Office's request and should be pending? In response to Appellant's request for clarification, the Office further compounded the ambiguity of the already unclear and confusing record. Thus, Appellant again requests clarification and an Examiner's Answer in response to the pending appeal brief filed March 14, 2002. Appellant respectfully requests that the petition be granted.

#### **Petition For Withdrawal of Holding of Defective Appeal Brief**

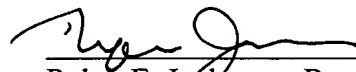
Appellant respectfully requests reconsideration and withdrawal of the apparently holding of defective appeal brief. The Office Action dated March 5, 2002 indicated that the originally

filed appeal brief was defective only because (1) it was unsigned, and (2) it exceeded an alleged appeal brief size limit. The Office Action dated March 5, 2002 did not mention any other defective brief issues. The Appellant submitted a signed appeal brief on March 14, 2002. The Appellant also presented arguments that the alleged appeal brief size limit was not a legal basis for holding the appeal brief defective and in noncompliance with 37 C.F.R. § 1.192(c).

The Appellant requested that an Examiner's Answer be provided in response to the signed appeal brief submitted March 14, 2002. This signed appeal brief is pending before the Office. Instead the Appellant received the Office Action dated July 11, 2002 which included both a Notification of Non-Compliance with 37 C.F.R. § 1.192(c) and a final rejection. Therefore, Appellant respectfully requests that the Examiner be instructed to write an Examiner's Answer to the submitted signed appeal brief so that this application may properly proceed without further delay on its way to the Board of Patent Appeals and Interferences. Appellant also respectfully requests that the Notice dated July 11, 2002 be vacated because it does not address the pending rejections. Appellant respectfully requests that this petition be granted.

Appellant's petitions should be granted for the reasons presented herein. The undersigned will be happy to discuss any aspect of the Application by telephone at the Office's convenience.

Respectfully submitted,



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